CONNECTICUT AFL-CIO

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Testimony of Lori Pelletier

Secretary-Treasurer of the Connecticut AFL-CIO

Before the Labor and Public Employees Committee

February 8, 2001

Senator Prague and Representative Zalaski and members of the Labor and Public Employees Committee, I am Lori Pelletier and I serve as the Secretary-Treasurer of the Connecticut AFL-CIO, and I'm here to testify on behalf of the 900 affiliated local unions who represent 220,000 working women and men from every city and town in our great state.

S.B. No. 96 (COMM) AN ACT CONCERNING TERMINATION WITHOUT CAUSE FOR CERTAIN OFFICERS IN MUNICIPAL POLICE DEPARTMENTS. **We are opposed to this legislation**. Municipal police department employees are protected with just cause in their union contract, and Chiefs are protected with the personal contract they sign with the municipality. If this intended for confidential employees who are not in either category then this legislation needs to be adjusted otherwise we believe this legislation is unnecessary.

S.B. No. 97 (COMM) AN ACT CONCERNING THE DENIAL OF UNEMPLOYMENT COMPENSATION BENEFITS TO CERTAIN DRIVERS WHO ARE UNEMPLOYED AS A RESULT OF BEING DENIED A SPECIAL OPERATOR'S PERMIT. **We are opposed to this legislation.** Employers pay into the Unemployment system for all workers, and if a worker is laid off this fund is their safety net. This legislation creates a dangerous precedent for workers and their families who need the money provided by their unemployment claim. Punishing the individual is one thing, but unemployment checks are a family safety net.

S.B. No. 798 (RAISED) AN ACT REQUIRING DOUBLE DAMAGES BE AWARDED IN CIVIL ACTIONS TO COLLECT WAGES. **We support this legislation.** In this economy with high unemployment, bad employers are often found exploiting workers by failing to pay them their proper wage. This penalty should deter employers from taking such risky and hurtful action.

H.B. No. 5174 (COMM) AN ACT CONCERNING STATE EMPLOYEES AND TRAINING TO DEAL WITH WORKPLACE VIOLENCE. **We support this legislation.** One out of every five workers who are killed on the job are murdered, and for women 40% of workplace deaths are due to domestic violence following them to the workplace. Connecticut should take a proactive step to help alleviate this serious workplace condition. The time to act is now not and not wait for an incident to occur.

H.B. No. 5465 (RAISED) AN ACT CONCERNING FAMILY AND MEDICAL LEAVE BENEFITS FOR CERTAIN MUNICIPAL EMPLOYEES. **We support this legislation.** Paraprofessionals provide a valuable resource for school systems and children. Without this legislation they are treated as second class in a school district. Paraprofessionals have families too, and they should be provided the protection of FMLA. This is the just and correct thing to do.

H.B. No. 5460 (RAISED) AN ACT CONCERNING CAPTIVE AUDIENCE MEETINGS. We SUPPORT this legislation. In 2009 Oregon passed this legislation, and their Governor signed the bill. The Chamber of Commerce immediately filed suit challenging this law. The Chamber lost this suit. So effective January 1, 2010 Oregon workers' rights were protected, and the action was not pre-emptive. Wisconsin followed suit in 2010. Attached to my testimony are two pieces of information. First is the explanation from former Attorney General Richard Blumenthal on why this legislation is constitutional and not preemptive. Secondly is the " Workplace Poster" that Oregon employers must now post regarding captive audience meetings.

However, because Connecticut has failed to provide this protection for workers almost without limits, employers can force workers to attend captive-audience meetings on work time. Most often, these meetings include exhortations by top managers that are carefully scripted to fall within the wide latitude afforded employers under U.S. law—allowing "predictions" but not "threats" of workplace closings.

Employers today try to influence workers on a variety of issues which are non work related. For example who to vote for in an election, which religious beliefs to consider as well as other social issues such as joining a labor organization. Employers can fire workers for not attending these "captive" meetings. They can impose a "no questions or comments" rule, and discipline any worker who speaks up. These meetings are unfair and present lies and misrepresentations as the truth without the employee being afforded an alternative opinion.

An employer is welcome to hold staff meetings to discuss work issues, such as contacting your representative on an issue pertaining to the business. However, it would not be permissible to tell employees which representative to vote for. Finally an employee who chooses not to attend these "meetings" would just simply return to their job.

This legislation provides workers with the protection they need from abusive employers. Employers who do not force their personal opinions regarding religion, political and social issues will not be subject to this legislation.

Thank you for holding this public hearing and if you have any questions I would be glad to address them at this time.

State of Connecticut

RICHARD BLUMENTHAL
ATTORNEY GENERAL

Hartford

March 14, 2007

The Honorable Edith Prague
The Honorable Kevin Ryan
Co-chairs, Labor and Public Employees Committee
Legislative Office Building
Hartford, Connecticut 06106

Dear Senator Prague and Representative Ryan:

I am writing in response to your letter requesting an opinion on whether substitute House Bill 5030, An Act Concerning Captive Audience Meetings from the 2006 General Assembly session, is preempted by the National Labor Relations Act. I am aware that there is substitute language for a proposed bill, House Bill 7326 from the 2007 session, that similarly prohibits mandatory employee meetings for political or religious reasons but includes in the definition of political matters "the decision to join or not join any lawful, political, social or community group or activity or any labor organization."

Although I cannot provide you with a formal legal opinion, as Conn. Gen. Stat. § 3-125 limits formal opinions to legislative leadership, I have reviewed the case law regarding preemption of state laws by the National Labor Relations Act (NLRA). Since State laws are presumed to be constitutional, and no cases specifically preempt captive audience state laws, the General Assembly should not withhold approval of this proposed legislation because of preemption concerns.

As a starting point, the court will presume that a state law is constitutional. The Connecticut Supreme Court has stated that "in any constitutional challenge to the validity of a statutory scheme, the [statutory scheme] is presumed constitutional ... and [t]he burden is on the [party] attacking the legislative arrangement to negative every conceivable basis which might support it..." *Batte-Holmgren et al., v. Commissioner of Public Health, et al.*, 281 A.2d 277, 914 A.2d 996 (2007), quoting *State v. Long,* 268 Conn. 508, 534, 847 A.2d 862, cert. denied, 543 U.S. 969, 125 S.Ct. 424, 160 L.Ed.2d 340 (2004).

The scope of NLRA preemption is unclear because there is no express preemption language in the NLRA. Moreover, there is a general presumption that Congress did not intend to displace state law. *Building & Construction Trades Council v. Associated Builders and*

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TESTIMONY OF
ATTORNEY GENERAL RICHARD BLUMENTHAL
BEFORE THE JUDICIARY COMMITTEE
MARCH 14, 2007

I appreciate the opportunity to support House Bill 7326, An Act Concerning Captive Audience Meetings.

This proposal would protect employees from coercion by an employer to attend a meeting to discuss religious or political issues. Importantly, the legislation would not prohibit an employer from holding meetings to discuss such topics or taking other means of communicating the employer's position on these topics. It would bar an employer from forcing employee attendance at such meetings. Moreover, the legislation specifically exempts certain conversations and meetings that further legitimate employer interests.

Employees and employers must have a cooperative working relationship. Attendance at meetings is often necessary to ensure that everyone understands business issues. Topics such as religion and politics are irrelevant to that cooperative relationship.

Concerns have been raised about whether the National Labor Relations Act preempts states from passing such a law. A general exercise of state labor regulation such as contained in House Bill 7326 is constitutional and I will vigorously defend it. I have attached to my testimony, my letter to the co-chairs of the Labor and Public Employees Committee explaining my reasoning for concluding that this legislation should not be rejected on preemption grounds.

Preemption is disfavored by the courts. Every state law is presumed to be constitutional. No court nor the National Labor Relations Board has issued any definitive ruling applying current federal law to captive audience state statutes. Preemption concerns should not dissuade this committee from supporting House Bill 7326.

I urge the committee's favorable consideration of House Bill 7326 as an important employee protection.

Contractors of Massachusetts/Rhode Island, 507 U.S. 218 (1993). As a result, case law has evolved over time to set forth two bases for NLRA preemption of state law.

The first line of preemption was first articulated by the United States Supreme Court in the case of *Machinists v. Wisconsin Employment Relations Commission*, 427 U.S. 132 (1976). Under this case law, known as the *Machinists* line of case law, states are barred from prohibiting or encouraging the use of economic weapons regarding labor relations. In the *Machinists* case, for example, the state was precluded from interfering with a union's refusal to work overtime which was intended to put economic pressure on the employer during labor negotiations.

The second basis for NLRA preemption of state law begins with the United States Supreme Court decision in *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959). Under this case law, the *Garmon* line of case law, states are prohibited from regulating activity that the NLRA protects under section 7 of the NLRA or prohibits as an unfair labor practice under section 8 of the NLRA. In the *Garmon* case, the United States Supreme Court ruled that the California state court could not hold the union civilly liable for peacefully picketing in front of the employer's place of business for purposes of exerting economic pressure on the employer.

In reviewing the cases that cite NLRA preemption under the *Garmon* or *Machinists* analysis, there is no ruling by the United States Supreme Court nor Second Circuit Court of Appeals -- which is the federal appellate court for Connecticut -- on any state regulation of mandatory employer meetings. For example, among the Second Circuit Court of Appeals cases involving NLRA preemption, the court has remanded a challenge to restrictions on employer use of state funds to influence union organizing, *Healthcare Association of New York State et al. v. Pataki, et al.*, 471 F.3d 87 (2nd Cir. 2006); found a state law concerning the imposition of prevailing wages was not preempted, *Rondout Electric v. NYS Department of Labor*, 335 F.3d 162 (2nd Cir. 2003); found that employer registration of an apprentice program was preempted, *Building Trades Employer's Educational Association v. McGowan*, 311 F.3d 501 (2nd Cir. 2002); and found union refusal to register seamen convicted of narcotics violations was not preempted, *Figueroa v. National Maritime Union of America, AFL-CIO*, 342 F.2d 400 (2nd Cir. 1965).

Although this legislation pertains generally to employer meetings involving religious and political discussions, it may have some impact on the employer-employee relationship regarding labor negotiations or union organizing, because the language prohibits an employer from requiring an employee to attend a meeting on issues concerning union organizing.

The mere fact that state regulation may affect labor negotiations or union organizing does not mean it is necessarily preempted by the NLRA. Rather, a court reviewing a preemption challenge to this legislation would need to engage in an analysis under *Garmon* or *Machinists*. The statute would have to be reviewed in light of how it is applied in particular circumstances.

As a result, this legislation is presumed to be constitutional and, if passed by the General Assembly, I will vigorously defend the law against any challenge based on federal preemption.

Very truly yours,

RICHARD BLUMENTHAL

RB/pas

NOTICE OF RIGHTS UNDER OREGON SENATE BILL 519

PASSED BY THE OREGON LEGISLATURE EFFECTIVE JANUARY 1, 2010

Oregon law prohibits employers from discharging, disciplining, taking adverse action, or otherwise penalizing an employee for the reasons listed below. It similarly prohibits employers from threatening employees with discharge, discipline, penalty, or threatening to take adverse action for the reasons listed below. These prohibitions apply:

1. If an employee declines to attend or participate in an employer sponsored meeting or communication when the primary purpose of the meeting or communication is for the employer to communicate its opinion about religious or political matters;

2. If an employer engages in prohibited action as a means to require an employee to attend a meeting or participate in a communication about religious or political matters; or

3. When an employee makes a good faith oral or written report of a violation or suspected violation of this law.

An employer may require attendance at meetings that are not primarily about religious or political matters and an employer may offer meetings, forums, or may otherwise communicate about religious or political matters if attendance or participation is strictly voluntary.

An employee who believes he or she has been subjected to a violation of this law may bring a lawsuit no later than 90 days after the date of the violation. The lawsuit may be brought in the circuit court of the judicial district where the violation is alleged to have occurred or where the employer has its principal office.